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WELLS FARGO BANK, N.A.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 MARTIN LEWIS and AARON COOPER, on)
behalf of themselves and a class of those)
13 similarly situated,)

14 Plaintiffs,)

15 vs.)

16 WELLS FARGO & CO.,)

17 Defendant.)

Case No. CV-08-2670-CW

Judge: Hon. Claudia Wilken

**DEFENDANT WELLS FARGO BANK,
N.A.'S ANSWER TO PLAINTIFFS'
COMPLAINT FOR VIOLATIONS OF
FLSA, ERISA, AND CALIFORNIA
WAGE AND HOUR LAWS; CLAIMS
FOR DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF**

Action Filed: May 28, 2008

Trial Date: None Set

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1 Defendant WELLS FARGO BANK, N.A., (“Wells Fargo”), erroneously sued as Wells
2 Fargo & Company, hereby answers the Complaint for Violations of FLSA, ERISA, and California
3 Wage and Hour Laws; Claims for Damages, Restitution and Injunctive Relief (the “Complaint”)
4 filed by Plaintiffs Martin Lewis and Aaron Cooper (collectively, “Plaintiffs”) as follows:

5 **JURISDICTION AND VENUE**

6 1. Answering paragraph 1 of the Complaint, Plaintiffs’ allegations concerning the
7 application of 28 U.S.C. § 1331, 29 U.S.C § 216(b), and 29 U.S.C. § 1132(e)(1) as a basis for
8 jurisdiction over their claims are legal conclusions to which no response is required.

9 2. Answering paragraph 2 of the Complaint, Plaintiffs’ allegations concerning the
10 applicability of 28 U.S.C. § 1332(d) as a basis for original jurisdiction over their claims are legal
11 conclusions to which no response is required. Because the proposed class is not sufficiently
12 defined, Wells Fargo lacks sufficient information to permit it to admit or deny whether there are
13 100 or more members in the proposed class and, on that basis, denies the allegation. Wells Fargo
14 assumes that the proposed class includes employees in the position entitled Network Engineer 4
15 (the position held by Plaintiffs while employed with Wells Fargo). Wells Fargo admits that at least
16 some current or former employees in the Network Engineer 4 position have a different citizenship
17 from Wells Fargo. Despite its assumption regarding the Network Engineer 4 position, Wells Fargo
18 maintains that the proposed class is not sufficiently defined. Wells Fargo admits that Plaintiffs are
19 alleging that the claims of the proposed class members exceed \$5,000,000 in the aggregate, but
20 denies that Plaintiffs are entitled to any sum.

21 3. Answering paragraph 3 of the Complaint, Plaintiffs’ allegations concerning the
22 application of 28 U.S.C. § 1367 as a basis for supplemental jurisdiction over Plaintiffs’ California
23 wage and hour law claims are legal conclusions to which no response is required.

24 4. Answering paragraph 4 of the Complaint, Plaintiffs’ allegation that the Court is
25 empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 is a legal
26 conclusion to which no response is required.

27 5. Answering paragraph 5 of the Complaint, Wells Fargo admits that it is
28 headquartered in San Francisco, California. Wells Fargo admits that it does business in California

1 and in this District. Wells Fargo lacks sufficient information to permit it to admit or deny the
2 allegation that a substantial part of the events giving rise to the claims in the Complaint occurred in
3 this District and, on that basis, denies the allegation.

4 6. Answering paragraph 6 of the Complaint, Plaintiffs' allegation concerning the
5 application of 28 U.S.C. § 1391(b) as a basis for venue in this matter is a legal conclusion to which
6 no response is required. Wells Fargo admits that it has its headquarters in this District. Wells
7 Fargo lacks sufficient information to permit it to admit or deny the allegation that a substantial part
8 of the events giving rise to the claims in the Complaint occurred in this District and, on that basis,
9 denies the allegation.

10 7. Answering paragraph 7 of the Complaint, Wells Fargo lacks sufficient information
11 to permit it to admit or deny the material allegations in paragraph 7 and, on that basis, denies each
12 and every material allegation contained therein.

13 **SUMMARY OF CLAIMS**

14 8. Answering paragraph 8 of the Complaint, Wells Fargo admits that Plaintiffs Lewis
15 and Cooper were employed by Wells Fargo in the position of Network Engineer 4. Wells Fargo
16 denies that Plaintiffs' allegations correctly set forth Plaintiffs' primary duties. Except as expressly
17 admitted, Wells Fargo denies each and every material allegation in paragraph 8 of the Complaint.

18 9. Answering paragraph 9 of the Complaint, Wells Fargo denies each and every
19 material allegation contained therein. Wells Fargo denies that any such employees were, are, or
20 will be improperly misclassified as exempt from overtime pay under federal law. Wells Fargo
21 asserts that the definition of the proposed "Nationwide FLSA Collective Plaintiffs" is vague,
22 ambiguous, and unidentifiable for reasons including, but not limited to, the fact that it does not
23 identify the positions purportedly included. Wells Fargo additionally asserts that it has not
24 committed any willful violation of the FLSA and that, consequently, a two-year statute of
25 limitations applies to Plaintiffs' FLSA claim. 29 U.S.C. § 255.

26 10. Answering paragraph 10 of the Complaint, Wells Fargo denies each and every
27 material allegation contained therein. Wells Fargo denies that any such employees were, are, or
28 will be improperly misclassified as exempt from overtime pay under California law. Wells Fargo

1 additionally asserts that the definition of the proposed “California Class” is vague, ambiguous, and
2 unidentifiable for reasons including, but not limited to, the fact that it does not identify the
3 positions purportedly included.

4 11. Answering paragraph 11 of the Complaint, Wells Fargo denies each and every
5 material allegation contained therein. Wells Fargo denies that any such employees were, are, or
6 will be improperly classified as exempt from overtime pay. Wells Fargo asserts that the definition
7 of the proposed “ERISA Class” is vague, ambiguous, and unidentifiable for reasons including, but
8 not limited to, the fact that it does not identify the positions purportedly included. Wells Fargo
9 further asserts that because Plaintiffs’ ERISA claim is entirely dependent on their California and
10 FLSA overtime claims, the applicable statutes of limitations stem from the FLSA and/or California
11 law, and not from ERISA.

12 12. Answering paragraph 12 of the Complaint, Plaintiffs’ allegation that Wells Fargo
13 has been the plan sponsor of the Wells Fargo Cash Balance Plan within the meaning of 29 U.S.C.
14 § 1002(16)(B) is a legal conclusion to which no response is required. Wells Fargo lacks sufficient
15 information to permit it to admit or deny Plaintiffs’ allegation that it has exercised actual
16 discretionary authority, responsibility, and/or control in determining what compensation would and
17 would not be credited under the Wells Fargo Cash Balance Plan and, on that basis, denies the
18 allegation. Plaintiffs’ allegation that Wells Fargo is a fiduciary of the Plan within the meaning of
19 29 U.S.C. § 1002(21) is a legal conclusion to which no response is required. Except as expressly
20 admitted or denied, Wells Fargo denies each and every material allegation in paragraph 12 of the
21 Complaint.

22 13. Answering paragraph 13 of the Complaint, Plaintiffs’ allegations regarding the
23 interpretation of 29 U.S.C. § 1002(5), 29 U.S.C. § 1002(16)(A), 29 U.S.C. § 1102(a)(1), and 29
24 U.S.C. § 1102(21) are legal conclusions to which no response is required.

25 14. Answering paragraph 14 of the Complaint, Plaintiffs’ allegations regarding the
26 interpretation of 29 U.S.C. § 1002(6) and 29 U.S.C. § 1002(7) are legal conclusions to which no
27 response is required.

28 15. Answering paragraph 15 of the Complaint, Wells Fargo denies each and every

1 material allegation contained therein. Wells Fargo further asserts that Plaintiffs have no personal
2 knowledge regarding the experience of any other purported members of the proposed Nationwide
3 FLSA Collective Plaintiffs or the proposed California Class and that Plaintiffs therefore lack any
4 proper basis for their allegations as to any such individuals.

5 16. Answering paragraph 16 of the Complaint, Wells Fargo admits that it did not require
6 Plaintiffs to clock in or out of work, keep a timesheet, or otherwise document their hours worked
7 because Plaintiffs were exempt from overtime requirements and Wells Fargo consequently had no
8 duty to record their hours worked. Except as expressly admitted, Wells Fargo denies each and
9 every material allegation in paragraph 16 of the Complaint.

10 17. Answering paragraph 17 of the Complaint, Wells Fargo admits that it did not require
11 Plaintiffs to clock in or out of work, keep a timesheet, or otherwise document their hours worked
12 because Plaintiffs were exempt from overtime requirements and Wells Fargo consequently had no
13 duty to record their hours worked. Wells Fargo denies that ERISA imposes a requirement on an
14 employer to maintain records of hours worked for exempt employees. Except as expressly
15 admitted, Wells Fargo denies each and every material allegation contained in paragraph 17 of the
16 Complaint.

17 18. Answering paragraph 18 of the Complaint, Wells Fargo denies each and every
18 material allegation contained therein.

19 19. Answering paragraph 19 of the Complaint, Wells Fargo denies each and every
20 material allegation contained therein.

21 **THE PARTIES**

22 20. Answering paragraph 20 of the Complaint, Wells Fargo denies that Plaintiff Martin
23 Lewis was employed by Wells Fargo in Roseville, California from approximately September 2000
24 to December 2007 as a Network Engineer 4. On information and belief, Lewis was employed by
25 Wells Fargo in Roseville, California from approximately September 2000 until January 2008 as a
26 Network Engineer 4. Wells Fargo denies that Plaintiffs' allegations correctly set forth Lewis's
27 primary duties. Wells Fargo admits that Lewis did not receive overtime pay while employed as a
28 Network Engineer 4 for Wells Fargo because he was exempt from overtime requirements under

1 applicable law. Wells Fargo lacks sufficient information to permit it to admit or deny the
2 remaining material allegations of paragraph 20 and, on that basis, denies each and every remaining
3 material allegation contained therein.

4 21. Answering paragraph 21 of the Complaint, Wells Fargo admits that Plaintiff Aaron
5 Cooper was employed by Wells Fargo in Roseville, California from approximately November 2001
6 to September 2007 as a Network Engineer 4. Wells Fargo denies that Plaintiffs' allegations
7 correctly set forth Cooper's primary duties. Wells Fargo admits that Cooper did not receive
8 overtime pay while employed as a Network Engineer 4 for Wells Fargo because he was exempt
9 from overtime requirements under applicable law. Wells Fargo lacks sufficient information to
10 permit it to admit or deny the remaining material allegations of paragraph 21 and, on that basis,
11 denies each and every remaining material allegation contained therein.

12 22. Answering paragraph 22 of the Complaint, Wells Fargo lacks sufficient information
13 to permit it to admit or deny the material allegations and, on that basis, denies each and every
14 material allegation contained therein.

15 23. Answering paragraph 23 of the Complaint, Wells Fargo admits that it is a
16 corporation that provides banking services throughout the United States. Wells Fargo admits that
17 its corporate headquarters is in San Francisco, California. Plaintiffs' allegation that the practices
18 described in the Complaint were performed in and emanated from Wells Fargo's headquarters in
19 San Francisco, California is so vague that no response can be formulated and, on that basis, the
20 allegation is denied. Except as expressly admitted, Wells Fargo denies each and every material
21 allegation contained in paragraph 23 of the Complaint.

22 **COLLECTIVE ACTION ALLEGATIONS**

23 24. Answering paragraph 24 of the Complaint, Wells Fargo denies each and every
24 material allegation contained therein.

25 25. Answering paragraph 25 of the Complaint, Wells Fargo denies each and every
26 material allegation contained therein. Wells Fargo asserts that Plaintiffs have no personal
27 knowledge regarding the experience of any other purported members of the proposed Nationwide
28 FLSA Collective Plaintiffs or the proposed California Class and that Plaintiffs therefore lack any

1 proper basis for their allegations as to any such individuals. Wells Fargo further asserts that the
2 proposed Nationwide FLSA Collective Plaintiffs are so vaguely defined as to potentially include
3 overtime exempt positions and, for that additional reason, denies each and every material allegation
4 contained in paragraph 25 of the Complaint.

5 26. Answering paragraph 26 of the Complaint, Plaintiffs' allegation concerning the
6 application of 29 U.S.C. § 216(b) as a basis for maintaining their action as an "opt-in" collective
7 action is a legal conclusion to which no response is required. Wells Fargo denies each and every
8 material allegation contained in paragraph 26 of the Complaint. Wells Fargo further asserts that
9 Plaintiffs have no personal knowledge regarding the experience of any other purported members of
10 the proposed Nationwide FLSA Collective Plaintiffs and that Plaintiffs therefore lack any proper
11 basis for their allegations as to any such individuals.

12 27. Answering paragraph 27 of the Complaint, Wells Fargo lacks sufficient information
13 and belief to permit it to admit or deny Plaintiffs' allegation that the names and addresses of the
14 proposed Nationwide FLSA Collective Plaintiffs are available from Wells Fargo's records and, on
15 that basis, denies that allegation. Wells Fargo denies each and every remaining material allegation
16 in Paragraph 27 of the Complaint. Wells Fargo asserts that the definition of the proposed
17 "Nationwide FLSA Collective Plaintiffs" is vague, ambiguous, and unidentifiable for reasons
18 including, but not limited to, the fact that it does not identify the positions purportedly included.

19 **CALIFORNIA CLASS ACTION ALLEGATIONS**

20 28. Answering paragraph 28 of the Complaint, Wells Fargo denies each and every
21 material allegation contained therein.

22 29. Answering paragraph 29 of the Complaint, Wells Fargo denies that the California
23 Class is so numerous that joinder of all members is impracticable. Wells Fargo lacks sufficient
24 information to permit it to admit or deny Plaintiffs' allegations regarding the number of persons
25 who allegedly satisfy the definition of the proposed California Class and, on that basis, denies the
26 allegations. Wells Fargo asserts that the definition of the proposed "California Class" is vague,
27 ambiguous, and unidentifiable for reasons including, but not limited to, the fact that it does not
28 identify the positions purportedly included.

1 30. Answering paragraph 30 of the Complaint, Wells Fargo denies each and every
2 material allegation contained therein.

3 a. Answering paragraph 30(a) of the Complaint, Wells Fargo denies each and
4 every material allegation contained therein.

5 b. Answering paragraph 30(b) of the Complaint, Wells Fargo denies each and
6 every material allegation contained therein.

7 c. Answering paragraph 30(c) of the Complaint, Wells Fargo denies each and
8 every material allegation contained therein.

9 d. Answering paragraph 30(d) of the Complaint, Wells Fargo denies each and
10 every material allegation contained therein.

11 e. Answering paragraph 30(e) of the Complaint, Wells Fargo denies each and
12 every material allegation contained therein.

13 f. Answering paragraph 30(f) of the Complaint, Wells Fargo denies each and
14 every material allegation contained therein.

15 31. Answering paragraph 31 of the Complaint, Wells Fargo denies each and every
16 material allegation contained therein.

17 32. Answering paragraph 32 of the Complaint, Wells Fargo denies each and every
18 material allegation contained therein.

19 33. Answering paragraph 33 of the Complaint, Plaintiffs' allegations concerning the
20 applicability of Fed. R. Civ. P. 23(b)(2) as a basis for class certification of their Second, Third,
21 Fourth, Fifth, and Sixth Claims for Relief are legal conclusions to which no response is required.
22 Wells Fargo denies each and every material allegation contained in paragraph 33 of the Complaint.

23 34. Answering paragraph 34 of the Complaint, Plaintiffs allegations concerning the
24 applicability of Fed. R. Civ. P. 23(b)(3) as a basis for class certification of their Second, Third,
25 Fourth, Fifth, and Sixth Claims for Relief are legal conclusions to which no response is required.
26 Wells Fargo denies each and every material allegation contained in paragraph 34 of the Complaint.

27 35. Answering paragraph 35 of the Complaint, Wells Fargo lacks sufficient information
28 to permit it to admit or deny the allegations of this paragraph and, on that basis, denies each and

1 every material allegation contained in therein. Wells Fargo asserts that no notice to members of the
2 proposed California Class is appropriate and that, in any case, such notice must be ordered by the
3 Court on terms set forth by the Court if so ordered.

4 **ERISA CLASS ACTION ALLEGATIONS**

5 36. Answering paragraph 36 of the Complaint, Plaintiffs allegations concerning the
6 applicability of Fed. R. Civ. P. 23(a), (b)(1), and/or (b)(2) are legal conclusions to which no
7 response is required. Wells Fargo denies each and every material allegation contained in paragraph
8 36 of the Complaint.

9 37. Answering paragraph 37 of the Complaint, Wells Fargo denies each and every
10 material allegation contained therein.

11 38. Answering paragraph 38 of the Complaint, Wells Fargo lacks sufficient information
12 to permit it to admit or deny Plaintiffs' allegations concerning the commonality of questions of law
13 and fact in the case and, on that basis, denies each and every material allegation contained therein.

14 a. Answering paragraph 38(a) of the Complaint, Wells Fargo denies each and
15 every material allegation contained therein.

16 b. Answering paragraph 38(b) of the Complaint, Wells Fargo denies each and
17 every material allegation contained therein.

18 c. Answering paragraph 38(c) of the Complaint, Wells Fargo denies each and
19 every material allegation contained therein.

20 d. Answering paragraph 38(d) of the Complaint, Wells Fargo denies each and
21 every material allegation contained therein.

22 e. Answering paragraph 38(e) of the Complaint, Wells Fargo denies each and
23 every material allegation contained therein.

24 39. Answering paragraph 39 of the Complaint, Wells Fargo admits that it did not require
25 Plaintiffs to clock in or out of work, keep a timesheet, or otherwise document their hours worked
26 because Plaintiffs were exempt from overtime requirements and Wells Fargo consequently had no
27 duty to record their hours worked. Except as expressly admitted, Wells Fargo denies each and
28 every material allegation in paragraph 39 of the Complaint. Wells Fargo further asserts that

1 Plaintiffs have no personal knowledge regarding the experience of any other purported members of
2 the proposed ERISA Class and that Plaintiffs therefore lack any proper basis for their allegations as
3 to any such individuals.

4 40. Answering paragraph 40 of the Complaint, Wells Fargo denies each and every
5 material allegation contained therein.

6 41. Answering paragraph 41 of the Complaint, Plaintiffs' allegations concerning the
7 applicability of Fed. R. Civ. P. 23(b)(1) and/or Fed. R. Civ. P. 23(b)(2) as a basis for class
8 certification of their Seventh and Eighth Claims for Relief are legal conclusions to which no
9 response is required. Wells Fargo denies each and every material allegation in paragraph 41 of the
10 Complaint.

11 42. Answering paragraph 42 of the Complaint, Wells Fargo lacks sufficient information
12 to permit it to admit or deny the allegations of this paragraph and, on that basis, denies each and
13 every material allegation contained therein. Wells Fargo asserts that no notice to members of the
14 proposed ERISA Class is appropriate and that, in any case, such notice must be ordered by the
15 Court on terms set forth by the Court if so ordered.

16 **FIRST CLAIM FOR RELIEF**

17 43. Answering paragraph 43 of the Complaint, Wells Fargo realleges and incorporates
18 by reference the above paragraphs as if they were set forth herein.

19 44. Answering paragraph 44 of the Complaint, Plaintiffs' allegation that Wells Fargo is
20 an "employer" engaged in interstate "commerce" and/or in the production of "goods" for
21 "commerce" within the meaning of 29 U.S.C. §§ 216(b) and 256 is a legal conclusion to which no
22 response is required. Plaintiffs' allegation that Wells Fargo has employed, and continues to
23 employ, "employee[s]" including Plaintiffs, and each of the collective Nationwide FLSA
24 Collective Plaintiffs, is a legal conclusion to which no response is required. Wells Fargo admits
25 that, at all relevant times, it had gross operating revenues in excess of \$500,000. Except as
26 expressly admitted, Wells Fargo denies each and every material allegation in paragraph 44 of the
27 Complaint.

28 45. Answering paragraph 45 of the Complaint, Wells Fargo lacks sufficient information

1 to permit it to admit or deny the material allegations and, on that basis, denies each and every
2 material allegation contained therein.

3 46. Answering paragraph 46 of the Complaint, Plaintiffs' allegation is a legal
4 conclusion to which no response is required.

5 47. Answering paragraph 47 of the Complaint, Wells Fargo denies each and every
6 material allegation contained therein.

7 48. Answering paragraph 48 of the Complaint, Wells Fargo admits that it did not pay
8 overtime premiums to employees who were exempt from overtime requirements under applicable
9 law for hours worked in excess of forty hours per week. Except as expressly admitted, Wells Fargo
10 denies each and every material allegation in paragraph 48 of the Complaint. Wells Fargo further
11 asserts that the proposed Nationwide FLSA Collective Plaintiffs are so vaguely defined as to
12 potentially include overtime exempt positions and, for that additional reason, denies each and every
13 material allegation contained in paragraph 48 of the Complaint.

14 49. Answering paragraph 49 of the Complaint, Wells Fargo denies each and every
15 material allegation contained therein.

16 50. Answering paragraph 50 of the Complaint, Wells Fargo admits that it did not require
17 Plaintiffs to clock in or out of work, keep a timesheet, or otherwise document their hours worked
18 because Plaintiffs were exempt from overtime requirements and Wells Fargo consequently had no
19 duty to record their hours worked. Except as expressly admitted, Wells Fargo denies each and
20 every material allegation in paragraph 50 of the Complaint.

21 51. Answering paragraph 51 of the Complaint, Wells Fargo denies each and every
22 material allegation contained therein.

23 52. Answering paragraph 52 of the Complaint, Wells Fargo denies each and every
24 material allegation contained therein.

25 53. Answering paragraph 53 of the Complaint, Wells Fargo denies each and every
26 material allegation contained therein.

27 **SECOND CLAIM FOR RELIEF**

28 54. Answering paragraph 54 of the Complaint, Wells Fargo realleges and incorporates

1 by reference the above paragraphs as if they were set forth herein.

2 55. Answering paragraph 55 of the Complaint, Plaintiffs' allegation is a legal
3 conclusion to which no response is required.

4 56. Answering paragraph 56 of the Complaint, Wells Fargo denies each and every
5 material allegation contained therein.

6 57. Answering paragraph 57 of the Complaint, Wells Fargo lacks sufficient information
7 to permit it to admit or deny the material allegations and, on that basis, denies each and every
8 material allegation contained therein.

9 58. Answering paragraph 58 of the Complaint, Wells Fargo denies each and every
10 material allegation contained therein.

11 59. Answering paragraph 59 of the Complaint, Wells Fargo denies each and every
12 material allegation contained therein.

13 **THIRD CLAIM FOR RELIEF**

14 60. Answering paragraph 60 of the Complaint, Wells Fargo realleges and incorporates
15 by reference the above paragraphs as if they were set forth herein.

16 61. Answering paragraph 61 of the Complaint, Plaintiffs' allegation is a legal
17 conclusion to which no response is required.

18 62. Answering paragraph 62 of the Complaint, Wells Fargo denies each and every
19 material allegation contained therein.

20 63. Answering paragraph 63 of the Complaint, Wells Fargo admits that more than thirty
21 days have passed since Plaintiffs ended their employment with Wells Fargo. Wells Fargo lacks
22 sufficient information to permit it to admit or deny the allegations regarding unidentified members
23 of Plaintiffs' proposed California Class and, on that basis, denies each and every remaining
24 material allegation in paragraph 63 of the Complaint.

25 64. Answering paragraph 64 of the Complaint, Wells Fargo denies each and every
26 material allegation contained therein.

27 **FOURTH CLAIM FOR RELIEF**

28 65. Answering paragraph 65 of the Complaint, Wells Fargo realleges and incorporates

1 by reference the above paragraphs as if they were set forth herein.

2 66. Answering paragraph 66 of the Complaint, Wells Fargo denies that it knowingly and
3 intentionally failed to provide timely, accurate, itemized wage statements including, *inter alia*,
4 hours worked, to Plaintiffs and members of Plaintiffs' proposed California Class in accordance
5 with Labor Code § 226(a) and the IWC Wage Orders. Wells Fargo denies that Plaintiffs and any
6 members of Plaintiffs' proposed California Class have suffered any injury as a result of Wells
7 Fargo's conduct. Wells Fargo admits that it did not require Plaintiffs to clock in or out of work,
8 keep a timesheet, or otherwise document their hours worked because Plaintiffs were exempt from
9 overtime requirements and Wells Fargo consequently had no duty to record their hours worked.
10 Wells Fargo denies that it was required to maintain such records by Labor Code § 1174(d). Except
11 as expressly admitted or denied, Wells Fargo denies each and every material allegation in
12 paragraph 66 of the Complaint

13 67. Answering paragraph 67 of the Complaint, Wells Fargo denies each and every
14 material allegation contained therein.

15 **FIFTH CLAIM FOR RELIEF**

16 68. Answering paragraph 68 of the Complaint, Wells Fargo realleges and incorporates
17 by reference the above paragraphs as if they were set forth herein.

18 69. Answering paragraph 69 of the Complaint, Wells Fargo denies each and every
19 material allegation contained therein.

20 70. Answering paragraph 70 of the Complaint, Wells Fargo denies each and every
21 material allegation contained therein.

22 71. Answering paragraph 71 of the Complaint, Wells Fargo denies each and every
23 material allegation contained therein.

24 72. Answering paragraph 72 of the Complaint, Wells Fargo denies each and every
25 material allegation contained therein.

26 **SIXTH CLAIM FOR RELIEF**

27 73. Answering paragraph 73 of the Complaint, Wells Fargo realleges and incorporates
28 by reference the above paragraphs as if they were set forth herein.

1 74. Answering paragraph 74 of the Complaint, Wells Fargo denies each and every
2 material allegation contained therein.

3 75. Answering paragraph 75 of the Complaint, Wells Fargo denies each and every
4 material allegation contained therein.

5 76. Answering paragraph 76 of the Complaint, Plaintiffs' allegations referencing
6 statutory sections are legal conclusions to which no response is required. Wells Fargo denies each
7 and every material allegation in paragraph 76 of the Complaint.

8 77. Answering paragraph 77 of the Complaint, Wells Fargo denies each and every
9 material allegation contained therein.

10 78. Answering paragraph 78 of the Complaint, Wells Fargo denies each and every
11 material allegation contained therein.

12 79. Answering paragraph 79 of the Complaint, Wells Fargo denies each and every
13 material allegation contained therein.

14 80. Answering paragraph 80 of the Complaint, Wells Fargo denies each and every
15 material allegation contained therein.

16 **SEVENTH CLAIM FOR RELIEF**

17 81. Answering paragraph 81 of the Complaint, Wells Fargo realleges and incorporates
18 by reference the above paragraphs as if they were set forth herein.

19 82. Answering paragraph 82 of the Complaint, Plaintiffs' allegations are legal
20 conclusions to which no response is required.

21 83. Answering paragraph 83 of the Complaint, Plaintiffs' allegations regarding the
22 applicability of terms within the meaning of 29 U.S.C. § 1002(2) and 29 U.S.C. § 1002(3) are legal
23 conclusions to which no response is required.

24 84. Answering paragraph 84 of the Complaint, Plaintiffs' allegations are legal
25 conclusions to which no response is required.

26 85. Answering paragraph 85 of the Complaint, Wells Fargo admits that it did not require
27 Plaintiffs to clock in or out of work, keep a timesheet, or otherwise document their hours worked
28 because Plaintiffs were exempt from overtime requirements and Wells Fargo consequently had no

1 duty to record their hours worked. Wells Fargo denies that it has violated ERISA. Except as
2 expressly admitted, Wells Fargo denies each and every material allegation in paragraph 85 of the
3 Complaint.

4 86. Answering paragraph 86 of the Complaint, Wells Fargo denies each and every
5 material allegation therein.

6 87. Answering paragraph 87 of the Complaint, Wells Fargo denies each and every
7 material allegation contained therein.

8 **EIGHTH CLAIM FOR RELIEF**

9 88. Answering paragraph 88 of the Complaint, Wells Fargo realleges and incorporates
10 by reference the above paragraphs as if they were set forth herein.

11 89. Answering paragraph 89 of the Complaint, Plaintiffs' allegation is a legal conclusion
12 to which no response is required.

13 90. Answering paragraph 90 of the Complaint, Wells Fargo denies each and every
14 material allegation contained therein.

15 91. Answering paragraph 91 of the Complaint, Wells Fargo denies each and every
16 material allegation contained therein.

17 92. Answering paragraph 92 of the Complaint, Wells Fargo denies each and every
18 material allegation contained therein.

19 93. Answering paragraph 93 of the Complaint, Wells Fargo denies each and every
20 material allegation contained therein.

21 94. Answering paragraph 94 of the Complaint, Wells Fargo denies each and every
22 material allegation contained therein.

23 **NINTH CLAIM FOR RELIEF**

24 95. Answering paragraph 95 of the Complaint, Wells Fargo realleges and incorporates
25 by reference the above paragraphs as if they were set forth herein.

26 96. Answering paragraph 96 of the Complaint, Plaintiffs' allegations are legal
27 conclusions to which no response is required.

28 97. Answering paragraph 97 of the Complaint, Wells Fargo lacks sufficient information

1 to permit it to admit or deny the material allegations, and on that basis, denies each and every
2 material allegation contained therein.

3 98. Answering paragraph 98 of the Complaint, Wells Fargo denies each and every
4 material allegation contained therein.

5 99. Answering paragraph 99 of the Complaint, Wells Fargo denies each and every
6 material allegation contained therein.

7 100. Answering paragraph 100 of the Complaint, Wells Fargo denies each and every
8 material allegation contained therein.

9 **PRAYER FOR RELIEF**

10 A. Answering paragraph A of the section of the Complaint entitled "Prayer For Relief,"
11 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

12 B. Answering paragraph B of the section of the Complaint entitled "Prayer For Relief,"
13 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

14 C. Answering paragraph C of the section of the Complaint entitled "Prayer For Relief,"
15 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

16 D. Answering paragraph D of the section of the Complaint entitled "Prayer For Relief,"
17 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

18 E. Answering paragraph E of the section of the Complaint entitled "Prayer For Relief,"
19 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

20 F. Answering paragraph F of the section of the Complaint entitled "Prayer For Relief,"
21 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

22 G. Answering paragraph G of the section of the Complaint entitled "Prayer For Relief,"
23 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

24 H. Answering paragraph H of the section of the Complaint entitled "Prayer For Relief,"
25 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

26 I. Answering paragraph I of the section of the Complaint entitled "Prayer For Relief,"
27 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

28 J. Answering paragraph J of the section of the Complaint entitled "Prayer For Relief,"

1 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

2 K. Answering paragraph K of the section of the Complaint entitled "Prayer For Relief,"
3 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

4 L. Answering paragraph L of the section of the Complaint entitled "Prayer For Relief,"
5 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

6 M. Answering paragraph M of the section of the Complaint entitled "Prayer For
7 Relief," Wells Fargo denies that Plaintiffs are entitled to the relief requested.

8 N. Answering paragraph N of the section of the Complaint entitled "Prayer For Relief,"
9 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

10 O. Answering paragraph O of the section of the Complaint entitled "Prayer For Relief,"
11 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

12 P. Answering paragraph P of the section of the Complaint entitled "Prayer For Relief,"
13 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

14 Q. Answering paragraph Q of the section of the Complaint entitled "Prayer For Relief,"
15 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

16 R. Answering paragraph R of the section of the Complaint entitled "Prayer For Relief,"
17 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

18 S. Answering paragraph S of the section of the Complaint entitled "Prayer For Relief,"
19 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

20 T. Answering paragraph T of the section of the Complaint entitled "Prayer For Relief,"
21 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

22 U. Answering paragraph U of the section of the Complaint entitled "Prayer For Relief,"
23 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

24 V. Answering paragraph V of the section of the Complaint entitled "Prayer For Relief,"
25 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

26 W. Answering paragraph W of the section of the Complaint entitled "Prayer For
27 Relief," Wells Fargo denies that Plaintiffs are entitled to the relief requested.

28 X. Answering paragraph X of the section of the Complaint entitled "Prayer For Relief,"

1 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

2 Y. Answering paragraph Y of the section of the Complaint entitled "Prayer For Relief,"

3 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

4 Z. Answering paragraph Z of the section of the Complaint entitled "Prayer For Relief,"

5 Wells Fargo denies that Plaintiffs are entitled to the relief requested.

6 AA. Answering paragraph AA of the section of the Complaint entitled "Prayer For
7 Relief," Wells Fargo denies that Plaintiffs are entitled to the relief requested.

8 **AFFIRMATIVE DEFENSES**

9 Wells Fargo has not completed its investigation of the facts of this case, has not completed
10 discovery in this matter, and has not completed its preparation for trial. The affirmative defenses
11 asserted herein are based on Wells Fargo's knowledge, information, and belief at this time and
12 Wells Fargo specifically reserves the right to modify, amend, or supplement any affirmative
13 defense contained herein at any time. In particular, Wells Fargo cannot know what affirmative
14 defenses it may have as to the claims of unidentified individuals who have not yet joined in the
15 action. Wells Fargo reserves the right to assert such defenses. Subject to the preceding
16 qualifications, and without conceding that it bears the burden of proof or persuasion as to any
17 defense, Wells Fargo alleges the following separate affirmative defenses to the Complaint.

18 **FIRST AFFIRMATIVE DEFENSE**

19 (Failure to State a Claim)

20 The Complaint, and claim contained therein, fail to state facts sufficient to state a claim on
21 which relief can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 (Lack of Subject Matter Jurisdiction)

24 The Complaint, and each claim contained therein, or some of them, are barred because this
25 Court lacks subject matter jurisdiction over the matter as pled.

26 **THIRD AFFIRMATIVE DEFENSE**

27 (Failure to Satisfy Requirements of a Collective Action)

28 Plaintiffs have failed to adequately plead and establish the necessary elements for collective

1 action treatment. Plaintiffs, therefore, should be barred from maintaining this case as a collective
2 action.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 (Payment of Wages/Res Judicata/Collateral Estoppel)

5 The Complaint, and each claim contained therein, is barred, in whole or in part, to the
6 extent Plaintiffs and any potential opt-in plaintiffs and/or proposed class members have ever
7 recovered in other proceedings any monies for the wages, benefits, or other compensation at issue
8 in this action.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 (Privilege/Legitimate Business Reasons)

11 The Complaint, and each claim contained therein, is barred in whole or in part because
12 Wells Fargo had an honest, good faith belief that all decisions, if any, affecting Plaintiffs and any
13 potential opt-in plaintiffs and/or proposed class members were made by Wells Fargo solely for
14 legitimate, business-related reasons that were neither arbitrary, capricious, nor unlawful and were
15 reasonably based upon the facts as Wells Fargo understood them.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 (Statutes of Limitations)

18 The alleged claims are barred, in whole or in part, by the applicable statutes of limitations,
19 including, but not limited to, California Code of Civil Procedure §§ 337, 338, 339, 340, and 343;
20 California Business and Professions Code § 17208; 29 U.S.C. § 255; and 29 U.S.C. § 1113.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 (Comparative Fault)

23 Wells Fargo is not the sole and proximate cause of the alleged damages and losses, if any.
24 Any damages awarded to Plaintiffs and any potential opt-in plaintiffs and/or proposed class
25 members must be apportioned according to the respective fault and legal responsibility of all
26 parties, persons, and entities or their agents, servants, and employees who contributed to and/or
27 caused the alleged damages, if any, according to proof presented at the time of trial.

28 / / /

EIGHTH AFFIRMATIVE DEFENSE

(Exempt Status)

Plaintiffs, as well as any potential opt-in plaintiffs and/or proposed class members, were properly classified as exempt employees for overtime purposes under the FLSA and California law. Accordingly, Wells Fargo is not liable for any alleged violations of state or federal wage and hour laws applicable to non-exempt employees.

NINTH AFFIRMATIVE DEFENSE

(Benefits of Exempt Status)

Wells Fargo is not liable for any alleged misclassification because the benefits received by Plaintiffs and/or any potential opt-in plaintiffs by holding the exempt position outweighed the burdens, if any, of the classification.

TENTH AFFIRMATIVE DEFENSE

(Improper Joinder)

The Complaint, and each claim contained therein, or some of them, are barred because Plaintiffs and any potential opt-in plaintiffs and/or proposed class members are improperly joined, because the legal standards for determination of exempt status require a highly fact-intensive analysis of the exempt nature of each job for each individual.

ELEVENTH AFFIRMATIVE DEFENSE

(Reasonable Belief Regarding Exemption)

The Complaint, and each claim contained therein, are limited because Wells Fargo held a reasonable and good faith belief that Plaintiffs and any potential opt-in plaintiffs and/or proposed class members were exempt from the receipt of overtime compensation.

TWELFTH AFFIRMATIVE DEFENSE

(Exclusions from Regular Rate of Pay)

Plaintiffs' claims, or some of them, are limited because any overtime allegedly due Plaintiffs and any potential opt-in plaintiffs and/or proposed class members must be reduced by those aspects of such individuals' compensation as are excluded from the regular rate of pay by applicable law. 29 U.S.C. 207(e).

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches)

Wells Fargo is informed and believes, and on that basis alleges, that the claims contained in the Complaint, and each of them, are barred because Plaintiffs and any potential opt-in plaintiffs and/or proposed class members have failed to raise their alleged claims in a timely fashion.

FOURTEENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs and any potential opt-in plaintiffs and/or proposed class members have waived the right by reason of their conduct and actions to assert the claims alleged in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

The claims contained in the Complaint are barred, in whole or in part, by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The claims contained in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Arbitration is Exclusive Remedy)

At some or all of the times alleged in the Complaint, Plaintiffs and any potential opt-in plaintiffs and/or proposed class members had contracted and agreed to settle the disputes alleged in the Complaint through binding arbitration. To the extent any Plaintiffs and/or any potential opt-in plaintiffs and/or any proposed class members executed such agreements, those agreements provide the sole and exclusive method for resolving disputes between Wells Fargo and Plaintiffs and/or any potential opt-in plaintiffs and/or proposed class members, and by the terms of such agreements Plaintiffs and any potential opt-in plaintiffs and/or proposed class members are barred from asserting their alleged claims in any other forum or by any other procedure to resolve said disputes.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Attorneys' Fees Not Recoverable)

Plaintiffs and any potential opt-in plaintiffs and/or proposed class members are precluded from recovering attorneys' fees from Wells Fargo under applicable provisions of law, including, but not limited to, California Business & Professions Code § 17200, *et seq.*

NINETEENTH AFFIRMATIVE DEFENSE

(Receipt of Meal and Rest Breaks)

Wells Fargo alleges that all required meal and rest breaks were provided to Plaintiffs and the proposed class members consistent with any and all applicable regulations, statutes, and Wage Orders, to the extent that Plaintiffs and proposed class members were entitled to meal and rest breaks.

TWENTIETH AFFIRMATIVE DEFENSE

(Waiver of Meal and Rest Breaks)

Wells Fargo alleges that Plaintiffs and proposed class members by their actions voluntarily waived their right to receive meal and rest breaks.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Wells Fargo is informed and believes, and on that basis alleges, that Plaintiffs and any potential opt-in plaintiffs and/or proposed class members, in the exercise of reasonable diligence, could have mitigated the alleged monetary damages to themselves and that they failed to exercise such reasonable diligence and have not mitigated such alleged monetary damages. By reason thereof, Plaintiffs and any potential opt-in plaintiffs and/or proposed class members are barred, in whole or in part, from recovering any damages from Wells Fargo.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Plaintiffs' Failure to Exercise Ordinary Care)

If Plaintiffs and any potential opt-in plaintiffs and/or proposed class members sustained any loss, injury, damage or detriment as alleged in the Complaint, the loss, injury, damage, or detriment was caused and contributed to by Plaintiffs and any potential opt-in plaintiffs and/or proposed class

members actions in that they did not exercise ordinary care on their own behalf, and in the performance of their employment at the times and places alleged in the Complaint, and their own actions and omissions proximately caused and contributed to the loss, injury, damage or detriment alleged, and their recovery from Wells Fargo, if any, should be reduced in proportion to the percentage of Plaintiffs' and any potential opt-in plaintiffs' and/or proposed class members' negligence or in proportion to their fault.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Good Faith)

Wells Fargo acted in good faith and had reasonable grounds for believing that its actions were in compliance with applicable law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Bad Faith)

The Complaint was brought by Plaintiffs in bad faith and is frivolous and by reason of the conduct stated herein Wells Fargo is entitled to, and intends to seek, reasonable expenses, including attorneys' fees, incurred in defending this action pursuant to California Code of Civil Procedure § 128.7.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Recovery of Consequential Damages)

The Complaint and each claim contained therein fail to state a claim for recovery of consequential damages based upon wages due and owing, restitution, or any other basis.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Failure to State a Claim Under Unfair Practices Act)

To the extent that Plaintiffs allege a claim under California Business & Professions Code § 17200, *et seq.*, such claim fails to allege facts sufficient to state a claim on which relief can be granted.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Violation of Underlying State or Federal Law)

Wells Fargo is not liable for any alleged unlawful or unfair business practices pursuant to California Business and Professions Code § 17200, *et seq.*, because it is not liable to Plaintiffs or any potential opt-in plaintiffs and/or proposed class members for any alleged violation of any underlying state or federal laws.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Benefits of Business Practice)

Wells Fargo is not liable for any alleged unlawful or unfair business practices pursuant to California Business and Professions Code § 17200, *et seq.*, because the benefits of Wells Fargo's practices with respect to Plaintiffs and any potential opt-in plaintiffs and/or proposed class members outweigh whatever particular harm or impact the practices allegedly caused.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(No Unfair, Misleading, or Deceptive Business Practice)

Wells Fargo is not liable for any alleged unlawful or unfair business practices pursuant to California Business and Professions Code § 17200, *et seq.*, because its business practices were not unfair, deceptive, or likely to mislead anyone.

THIRTIETH AFFIRMATIVE DEFENSE

(No Willfulness)

Wells Fargo did not act willfully or with knowledge or reckless disregard as to whether its conduct violated applicable law, including but not limited to ERISA, the FLSA, or California wage and hour laws.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Good Faith Dispute Regarding Wage Payments)

The Complaint and each claim contained therein fail to state a claim for penalties under California Labor Code § 203 because there is a good faith dispute as to Wells Fargo's obligation to pay any wages which may be found due.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Knowledge, Authorization, or Ratification)

Wells Fargo is not liable for the alleged damages because, if any person or entity engaged in intentional, willful, or unlawful conduct as alleged in the Complaint, such person or entity did so without the knowledge, authorization, or ratification of Wells Fargo.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Reasonable Deportment)

The claims contained in the Complaint are barred because Wells Fargo was acting in reasonable deportment.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Offset)

The Complaint, and each claim contained therein, is barred to the extent that the claims of Plaintiffs and any potential opt-in plaintiffs and/or proposed class members are subject to an offset, representing amounts improperly obtained from Wells Fargo or which would constitute unjust enrichment of Plaintiffs and any potential opt-in plaintiffs and/or proposed class members.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

The Complaint is barred because Plaintiffs and any potential opt-in plaintiffs and/or proposed class members would be unjustly enriched if they prevail on the causes of action in the Complaint.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Lack of Standing)

The Complaint, and each claim contained therein, is barred to the extent Plaintiffs and any potential opt-in plaintiffs and/or proposed class members lack standing to assert these matters against Wells Fargo.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Fault of Others)

If and to the extent Plaintiffs and any potential opt-in plaintiffs and/or proposed class

1 members have sustained any damages, other third parties for whom Wells Fargo is not legally
2 responsible are solely responsible for the acts complained of in the Complaint and the alleged
3 damages arising therefrom such that equitable and express principles of indemnity apply to this
4 action, thus barring recovery from Wells Fargo.

5 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

6 (Reliance on Opinion Letter or Regulation)

7 The Complaint, and each claim contained therein, is barred to the extent Wells Fargo's
8 actions were in good faith, in conformity with, and in reliance on a written administrative
9 regulation, order, ruling, approval, opinion letter, or interpretation of the Department of Labor, or
10 any administrative practice or enforcement policy of such agency. Frank v. McQuigg, 950 F.2d
11 590 (9th Cir. 1991); 29 U.S.C. § 259.

12 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

13 (Lack of Consideration)

14 Plaintiffs' Complaint and the alleged contractually based claims contained therein are
15 barred for lack of consideration.

16 **FORTIETH AFFIRMATIVE DEFENSE**

17 (Failure to Satisfy Requirements of a Class Action)

18 Plaintiffs and the proposed class members have failed to plead adequately and establish the
19 elements which are necessary for class action treatment, and therefore should be barred from
20 seeking to certify this case as a class action, including because there is no ascertainable class and
21 no well-defined community of interest among the purported class members.

22 **FORTY-FIRST AFFIRMATIVE DEFENSE**

23 (Failure of Predominant Common Questions of Law or Fact)

24 Plaintiffs and the proposed class members have failed to adequately plead the elements
25 which are necessary for class action treatment, and therefore should be barred from seeking to
26 certify this case as a class action, including because there are no predominant common questions of
27 law or fact between the purported class representatives and the purported class members.

28 ///

FORTY-SECOND AFFIRMATIVE DEFENSE

(Failure of Class Representatives to Have Claims Typical of the Class)

Plaintiffs and the proposed class members have failed to adequately plead the elements which are necessary for class action treatment, and should therefore be barred from seeking to certify this case as a class action, including because the proposed class representatives do not have claims typical of the purported class members.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Qualify as Class Representatives)

The alleged causes of action are barred, in whole or in part, as a class action because Plaintiffs do not meet the requirements for class representatives.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Class Action Not Superior Method of Adjudication)

The alleged causes of action are barred, in whole or in part, as a class action because a class action is not the superior method for adjudicating this dispute.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

Plaintiffs' and the proposed class members' and/or collective action plaintiffs' claims, and each of them, are barred, in whole or in part, by the doctrine of accord and satisfaction.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Release)

Plaintiffs' and any potential opt-in plaintiffs' and/or proposed class members' alleged claims, and each of them, are barred, in whole or in part, by the doctrine of release.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to Join Indispensable Parties)

The Complaint, and each claim contained therein, is barred, in whole or in part, because Plaintiffs have failed to join indispensable parties.

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FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Violation of Constitutional Rights)

Any award of relief as sought by Plaintiffs and any potential opt-in plaintiffs and/or proposed class members would violate the due process and excessive fine clauses of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as the Constitution of the State of California.

FORTY-NINTH AFFIRMATIVE DEFENSE

(Plaintiffs' Prior Material Breaches Bar Recovery)

Plaintiffs are barred, in whole or in part, from recovering on any contract alleged in the Complaint because Plaintiffs materially breached any contract that they may have had with Wells Fargo, prior to any alleged breach thereof by Wells Fargo.

FIFTIETH AFFIRMATIVE DEFENSE

(Performance)

If any contract alleged in the Complaint imposed any obligations on Wells Fargo, Wells Fargo substantially complied with any and all such obligations.

FIFTY-FIRST AFFIRMATIVE DEFENSE

(Unenforceable Contract)

Plaintiffs claims based on the purported existence of a contract are barred, in whole or in part, to the extent that certain provisions of the alleged contract are not legally binding provisions and do not contain legally binding terms.

FIFTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

The claims alleged in the Complaint are barred, in whole or in part, because Plaintiffs and any proposed class members failed to exhaust their administrative remedies and failed to comply with the statutory prerequisites to bringing suit set forth in ERISA. Further, Plaintiffs and any proposed class members have failed to satisfy all conditions precedent to payment of benefits under the Wells Fargo Cash Balance Plan.

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FIFTY-THIRD AFFIRMATIVE DEFENSE

(Breach of Fiduciary Duty – Plaintiffs)

To the extent Plaintiffs and/or proposed class members were damaged as a result of matters alleged in the Complaint, their damages, if any, were caused by their own actions and breaches of fiduciary duty.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

(No Breach of Fiduciary Duty – Wells Fargo)

At all times herein mentioned, Wells Fargo acted in the utmost good faith and in the best interest of Plaintiffs and/or proposed class members. To the extent Wells Fargo has any fiduciary duty to Plaintiffs and/or proposed class members, there was no breach of that fiduciary duty by Wells Fargo as alleged in the Complaint.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Wells Fargo alleges that it presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Wells Fargo reserves herein the right to assert additional defenses in the event discovery or an investigation indicates that it would be appropriate. Wells Fargo alleges that it presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available.

PRAYER

WHEREFORE, Wells Fargo prays for judgment as follows:

1. That judgment be entered in favor of Wells Fargo and against Plaintiffs and the proposed class members;
2. That Plaintiffs and the proposed class members and potential collective action plaintiffs take nothing by their Complaint and that the Complaint herein be dismissed, in its entirety, with prejudice;
3. That Wells Fargo be awarded its costs of suit herein;
4. That Wells Fargo be awarded reasonable attorneys' fees pursuant to California

1 Labor Code § 218.5 and any other applicable statute as may be determined by the Court; and

2 5. For such other relief as the Court may deem just and proper.

3 Dated: June 30, 2008

CARLTON DiSANTE & FREUDENBERGER LLP

Timothy M Freudenberger

Alison L. Tsao

Kent J. Sprinkle

6 By: /S/ - Alison L. Tsao

Alison L. Tsao

Attorneys for Defendant

WELLS FARGO BANK, N.A.